IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ramniwas & ors. Versus State of Rajasthan & ors.

S.B. Criminal Misc. Petition No. 277/2003 against the order dated 29-1-2003 passed by the Sessions Judge, Churu, in Criminal Revision No. 6/2002.

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Date of Order: October 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Anil Vyas, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. N.S. Rajpurohit, for the non-petitioners No.2 and 3.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 29-1-2003 passed by the Sessions Judge, Churu (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 6/2002, whereby the criminal revision filed by the petitioners against the order dated 19-1-2002 passed by the Sub-Divisional Magistrate, Churu (for short, "the Executive Magistrate" hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Executive

Magistrate as well as the Revisional Court.

On a complaint filed by the Station House Officer, Police Station, Sardarshahar that party No.1 Puranmal and party No.2 Mohan Lal are bent upon to breach the peace with regard to possession of the land bearing Khasra No.152/01 measuring 23 Bighas and 10 Biswas, the Executive Magistrate, on being satisfied with the material placed before it, prima facie came to the conclusion that there is likelihood of breach of peace with regard to the possession of the land in question, drew a preliminary order under sub-section (1) of Section 145 of the Code, attached the land in question and appointed a receiver under Section 146 of the Code. However, during pendency of the proceedings, Party No.1 and Party No.2 compromised the matter and Party No.2 admitted that on the relevant date, Party No.1 Puranmal was in possession of the land in question and, therefore, the Executive Magistrate directed the receiver to hand over the possession of the land in dispute to Party No.1 as agreed between the parties.

An application was filed by the petitioners before the Executive Magistrate to implead them as party. That application was dismissed on 19-1-2002 by a well-reasoned order passed by the Executive Magistrate and the Executive Magistrate held that with regard to the land in question, a revenue suit was filed bearing No. 149/1982, having title Mandir Parshwanath Vs. Haru

Ram and an application to appoint a receiver was also filed. By the order dated 16-2-1985, the Tehsildar, Sardarshahar was appointed as the receiver, who took over the possession of the land in question. The order appointing the receiver was made absolute on 29-6-1985. Subsequently, the revenue suit No. 149/1982 was decreed and in compliance of the decree, the land in question was released from attachment by the order dated 1.8.1985 and the possession was handed over to temple Parshwanath through its Manager and party No.1 Puranmal is the Manager of that temple. This shows that the parties have resorted to revenue suit with regard to the land in dispute seeking the declaration of title as also all the consequential reliefs.

Even otherwise, the proceedings under Section 145 of the Code, in these circumstances, cannot be said to be maintainable in view of the decision of the Hon'ble Supreme Court in Mahar Janan & ors. Vs. State of Delhi & ors., (2004) 13 SCC 421, wherein the Hon'ble Supreme Court held as under:-

> "The house property, which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil Court. The question as to possession over the property or entitlement to possession would be determined by the civil Court. The criminal proceedings have remained pending for about a decade. There is no propriety behind allowing these proceedings to continue in view of the parties having already approached the civil Court. Whichever way proceedings under Section 145 Cr.P.C. may

> terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, it is proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit."

In Ram Sumer Puri Mahant Vs. State of U.P., (1985)1 SCC 427, the Hon'ble Supreme Court held as under:-

> "When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach th civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue."

In Amresh Tiwari Vs. Lalta Prasad Dubey & Anr., 2000 SCC (Cri.) 806, the Hon'ble Supreme Court held that it is only in cases where a civil suit is filed for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under

Section 145 of the Code should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate.

This Court, in Tulchha Ram Vs. State of Rajasthan & ors., S.B. Criminal Misc. Petition No. 1416/2005, decided on 31.10.2006, held that for the very subject of disputed property, parties have approached the Revenue Court and in the proceeding before the Board of Revenue, an interim order directing the parties to maintain status quo has been passed and ultimate decision of Revenue Court would be binding on the parties and, therefore, no useful purpose will be served in allowing to continue parallel criminal proceedings and such proceeding under Sections 145 and 146 of the Code have been quashed.

Be that as it may, both the contesting parties, i.e. parties No.1 and 2, have compromised the matter, may be in view of the decision of the Revenue Court and there exists no breach of peace and the Executive Magistrate was justified in deciding the matter on the basis of the compromise arrived at between the parties. In the circumstance, therefore, the Revisional Court was justified in dismissing the revision petition filed by the petitioners against the order passed by the Executive Magistrate declining to implead them as party in the matter. It

cannot be said that the order impugned would result in serious miscarriage of justice, more particularly when the parties have already resorted to the revenue court and the suit before the revenue court has been decreed.

In the result, I do not find any merit in the criminal miscellaneous petition and it is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

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